

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B03

PLR-101573-10

Date:

January 22, 2010

### Legend

Parent =

Sub 1 =

Sub 2 =

X =

Y =

Date A =

Date B =

Parent Official =

Dear :

This letter responds to a letter dated January 6, 2010, submitted by Parent, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension of

time to file a statement under § 1.337(d)-2(c) to prevent some or all of a reduction in basis in the stock of a subsidiary upon the deconsolidation of the subsidiary (the "Election") that was required to be filed with the Parent consolidated group's consolidated Federal income tax return for the tax year ended Date B. The material information submitted for consideration is summarized below. All citations in this letter to regulations are to regulations in effect for the tax year ended Date B.

For the tax year ended Date B, Parent was the common parent of a consolidated group. Sub 1 was a wholly owned subsidiary of Parent and a member of the consolidated group. Sub 2 was owned x percent by Parent with the remaining y percent owned by Sub 1. Sub 2 was also a member of the consolidated group.

On Date A, Sub 2 issued additional stock to an unrelated third party in exchange for cash, then Sub 2 used the cash to redeem Parent's interest in Sub 2, deconsolidating Sub 2 from the Parent consolidated group. Parent did not recognize any loss on the redemption. However, Sub 1, a member of Parent's consolidated group, retained its stock interest in Sub 2.

An election under § 1.337(d)-2(c) to prevent Sub 1's basis in its Sub 2 stock from being reduced to its value immediately before the deconsolidation of Sub 2 was required to be filed with or as part of the Parent consolidated group's consolidated Federal income tax return for the year of the disposition. However, for various reasons, the Election was not filed. Subsequently, this request was submitted under § 301.9100-3 for an extension of time to file the Election.

Section 1.337(d)-2(a)(1) provides a general rule that no deduction is allowed for any loss recognized by a member of a consolidated group with respect to the disposition of stock of a subsidiary.

Section 1.337(d)-2(b)(1) provides a general rule that if the basis of a member of a consolidated group in a share of stock of a subsidiary exceeds its value immediately before a deconsolidation of the share, the basis of the share is reduced at that time to an amount equal to its value.

Section 1.337(d)-2(b)(2) provides that deconsolidation means any event that causes a share of stock of a subsidiary that remains outstanding to be no longer owned by a member of any consolidated group of which the subsidiary is also a member.

Section 1.337(d)-2(c)(2) provides that loss is not disallowed under § 1.337(d)-2(a)(1) and basis is not reduced under § 1.337-2(b)(1) to the extent the taxpayer establishes that the loss or basis is not attributable to the recognition of built-in gain, net of directly related expenses, on the disposition of an asset (including stock and securities).

Section 1.337(d)-2(c)(1) provides that § 1.337(d)-2(c) applies with respect to stock of a subsidiary only if a separate statement entitled “§ 1.337(d)-2(c) statement” is included with the return in accordance with § 1.337(d)-2(c)(3).

Section 1.337(d)-2(c)(3) provides that the statement required under § 1.337(d)-2(c)(1) must be included with or as part of the taxpayer's return for the year of the disposition or deconsolidation.

In general, § 1.337(d)-2 applies with respect to dispositions and deconsolidations on or after March 3, 2005.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.337(d)-2(c)(3)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent establishes that it acted reasonably and in good faith, that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and that granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent and Parent Official explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Election, and that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the affidavits submitted and the representations made, we conclude that Parent has established that it acted reasonably and in good faith in failing to timely file the Election, that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and that granting relief will not prejudice

the interests of the government. Accordingly, provided the Parent consolidated group qualifies substantively to file the Election, we grant an extension of time under § 301.9100-3, until sixty (60) days from the date on this letter, for Parent to file the Election.

The above extension of time is conditioned on the Parent consolidated group's tax liability, if any, not being lower in the aggregate for all years to which the Election applies than it would have been if the Election had been timely made (taking into account the time value of money). We express no opinion as to the Parent consolidated group's tax liability for the years involved. A determination thereof will be made by the Director's office upon audit of the Federal income tax returns involved. Further, we express no opinion as to the Federal income tax effect, if any, if it is determined that the Parent consolidated group's tax liability is lower. Section 301.9100-3(c).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, we express no opinion with respect to whether Parent qualifies substantively to make the Election. In addition, we express no opinion as to the tax effects or consequences of filing the Election late under the provisions of any other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Election late that are not specifically set forth in the above ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable continue to apply.

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

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Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel (Corporate)